



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2012-0263]

RIN 1625-AA00

Safety Zone, East River, Brooklyn Bridge Scaffolding
Repair, Brooklyn, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary Final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of the East River, in the vicinity of the Brooklyn Bridge. This action is necessary to provide for the safety of life and property on the navigable waters during emergency repairs to stabilize and remove the damaged scaffolding under the eastern span of the bridge. This rule is intended to restrict all vessels from a portion of the East River during the repair and removal of the damaged scaffolding.

DATES: This rule is effective from March 27, 2012 until April 30, 2012.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2012-0263 and are available online by going to <http://www.regulations.gov>, inserting USCG-2012-0263 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Lieutenant William George, Coast Guard; telephone (718) 354-4114, e-mail William.J.George@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice

and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is necessary to ensure the safety of mariners and vessels intending to transit on the East River in the vicinity of the Brooklyn Bridge where damaged corrugated metal scaffoldings and loosely hanging cables pose a potential hazard to navigation. Temporary repairs of the damaged section of the scaffolding are currently ongoing. The removal of the scaffolding is expected to take approximately three to four weeks. During this period falling debris may pose an imminent danger to the safety of the vessels and their occupants transiting the East River in the vicinity of the Brooklyn Bridge. Therefore, a temporary safety zone to protect transiting mariners and vessels from this hazard is needed immediately.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. The Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication because

to do otherwise would be contrary to the public interest since immediate action is required to protect mariners and vessels transiting under the bridge while workers conduct emergency repairs and removal of the damaged scaffolding.

Basis and Purpose

The legal basis for this rule is 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

On March 14, 2012 the Coast Guard received a report that a crane barge struck the scaffolding under the eastern span of the Brooklyn Bridge. As a result of the collision the corrugated metal panels that make up the scaffolding structure were damaged and some of the cables that supported the scaffolding were broken and are loosely hanging approximately 15 feet from the bottom of the bridge, effectively reducing the vertical clearance of the bridge. As a result of the decreased clearance, Vessel Traffic Service New York implemented a temporary measure restricting vessels with an air draft greater than 90 feet from transiting under the Brooklyn Bridge.

During a meeting with New York City Office of Emergency Management the Coast Guard was advised that some

of the corrugated metal scaffolding panels that were struck and damaged were not properly secured and may pose a hazard to vessels intending to transit under that portion of the Brooklyn Bridge. The Coast Guard and New York Police Department Harbor Unit began advising vessels to transit around the impacted area. New York City Office of Emergency Management on behalf of the Unified Command requested that the Coast Guard establish a temporary safety zone to restrict vessels from transiting under the eastern portion of the Brooklyn Bridge until emergency temporary repairs and removal of the scaffolding and cables have been completed.

This temporary safety zone is necessary to ensure the safety of vessels and their occupants during the emergency repairs and removal of the scaffolding under the bridge. The Captain of the Port New York (COTP) has determined that establishing a temporary safety zone to restrict vessels from transiting on the East River under the eastern portion of the Brooklyn Bridge where scaffolding are being repaired or removed will help ensure the safety of persons and property and help minimize the associated risks associated with the emergency repair work.

Discussion of Rule

The COTP is establishing a temporary safety zone to ensure the safety of mariners, passengers, and vessels during the emergency repair and removal work necessary to stabilize the damaged scaffolding on the Brooklyn Bridge.

The safety zone will encompass all waters of the East River directly below the scaffolding under the eastern portion of the bridge, from the centerline of the bridge to the tower on the Brooklyn side. The safety zone will encompass the navigable waters within a 270 yards by 50 yards area on the eastern side of the East River directly below the east span of the Brooklyn Bridge. All persons and vessels shall comply with the instructions of the COTP or the designated representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the COTP New York or the designated representative. The COTP or the designated representative may be contacted via VHF Channel 16

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Executive Order 12866 and Executive Order 13563

This rule is not a significant regulatory action under

section 3(f) of Executive Order 12866, as supplemented by Executive order 13563, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

This determination is based on the fact that a temporary safety zone will restrict access to a small portion of the navigable waterways of the East River. Vessels will be able to navigate around the safety zone. Furthermore, vessels may be authorized to transit through the temporary safety zone with the permission of the COTP or the designated representative.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a

substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners and operators of vessels intending to transit or anchor in a small portion of the East River during the effective period.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reason: Vessel traffic can pass safely around the safety zone. Before the effective period, we will issue maritime advisories widely available to users of the waterway.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to

comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though

this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a

substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why

using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction. This rule involves establishment of a temporary safety zone on the waters of the East River in the vicinity of Brooklyn Bridge. An environmental analysis checklist and a categorical

exclusion determination will be available in the docket where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T01-0223 to read as follows:

§ 165.T01-0223 Safety Zone; East River, Brooklyn Bridge Scaffolding Repair, Brooklyn, NY

(a) Regulated area. The following area is a temporary safety zone: All waters of the East River within the area bounded by a line drawn from the following approximate position 40°42'14.727"N, 073°59'41.094"W; thence west to approximate position 40°42'20.648"N, 073°59'48.466"W; thence north to approximate position 40°42'21.672"N, 073°59'47.050"W; thence east to approximate position

40°42'15.825"N, 073°59'39.728"W; then along the shoreline and back to the point of origin (NAD 83).

(b) Enforcement period. This rule is effective from March 27, 2012 until April 30, 2012.

(c) Regulations. (1) The general regulations contained in 33 CFR 165.23 apply as well as the following regulations.

(d) Definitions. The following definitions apply to this section:

(1) Designated Representative. A "designated representative" is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the COTP, Sector New York to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF-FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(2) Official Patrol Vessels. Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP.

(e) Vessel operators desiring to enter or operate within the regulated areas shall contact the COTP or the designated representative via VHF channel 16 or 718-354-

4353 (Sector New York Command Center) to obtain permission to do so.

(f) The COTP or the designated representative may delay or terminate this demolition at any time it is deemed necessary to ensure the safety of life or property.

All persons and vessels in the regulated area shall comply with the instructions of the COTP New York or the designated representative. Representatives comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed.

Dated: March 27, 2012

L. L. FAGAN
Rear Admiral, U.S. Coast Guard
Captain of the Port New York

[FR Doc. 2012-8536 Filed 04/09/2012 at 8:45 am;
Publication Date: 04/10/2012]